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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re THAO TRAN

on Habeas Corpus.

G043205

(Super. Ct. Nos. C-57493 &  
M-12710)

O P I N I O N

Original proceeding; petition for a writ of habeas corpus. Request to review in camera confidential documents submitted under seal. Petition granted. Request denied.

Thao Tran, in pro. per.; Steve M. Defilippis, under appointment by the Court of Appeal for Petitioner.

Edmund G. Brown, Jr., Attorney General, Julie L. Garland, Assistant Attorney General, Amy M. Roebuck and Gregory J. Marcot, Deputy Attorneys General, for Respondent.

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In April 2009, the Board of Parole Hearings (the Board) found petitioner Thao Tran suitable for release on parole. Subsequently, the Governor reversed the Board's decision. Petitioner challenged the Governor's decision by filing a petition for a writ of habeas corpus in the superior court. That court denied the petition. Petitioner then sought the same relief by filing the current petition in this court. We issued an order to show cause to the Governor to review his ruling and he filed a return.

We now conclude the Governor's decision is not supported by evidence and grant the petition. The Governor has submitted confidential documents under seal with a request that we review them in camera. Petitioner opposes this request. Since this material was not before the Board or considered by it, we shall deny the Governor's request.

## FACTS AND PROCEDURAL BACKGROUND

Petitioner was born in Vietnam. At age 14, he fled Vietnam with his father. His mother and other immediate family members remained in that country. Petitioner and his father lived for a time in refugee camps in Malaysia and the Philippines before entering the United States.

In February of 1983, petitioner, then 18 and on probation for an earlier trespassing conviction, attended a birthday party. While there he displayed a gun and fired it several times, wounding a man named Dong Lam and killing a 16-year-old girl named Lam Ngo. Petitioner fled, but was apprehended in Texas two years later. He pleaded guilty to second degree murder and assault with a firearm, both committed through the personal use of a firearm, in return receiving a 15-years-to-life state prison sentence.

In a probation officer's report prepared after his arrest, which the Board incorporated by reference, petitioner explained "he was at a birthday party with a friend who got into a fight with another male over a girl. There was a gunfight and [petitioner] claim[ed] he 'missed the guy and hit the girl accidentally.'" According to the probation officer, petitioner "denied . . . gang affiliation," but the "[d]istrict [a]ttorney['s] records . . . described [him] as a gang member."

Petitioner gave the following explanation of the shooting to a psychologist during his 2008 mental health evaluation: "I went to a party with friends and got into an argument. I was invited by another friend[] who had lots of friends[,] . . . Vietnamese and Chinese. . . . The Vietnamese and Chinese never got along. When I got to this party there were a lot of Chinese . . . . The victim, Mr. Lam, . . . singled me out and talked crazy to me. I had left the party during a break . . . and he didn't want to let me back inside. . . . I had friends around me. I got mad. I felt disrespected and some friends instigated me [saying] [']man don't let him talk to you like that.['] I wanted to impress my friends. . . . I said [']I'm going back in['] and that was my mistake . . . . I kn[e]w something is going to happen. I didn't think about the consequences. . . . I felt confident to take the challenge because a gang member friend gave me a gun. . . . It was like a toy. I didn't realize it was a deadly weapon. I thought I could scare him. I had seen the power of the weapon in [Vietnam]. . . . My intent was I would want to talk crazy like he did to me but he came out and saw me. He wanted to tell me . . . not to come back. When he pushed me, he had a hand in his jacket and I pulled out my gun and shot him. I don't know why[,] for no reason. . . . The mix of anger and [fear], I felt anger when he came out with an attitude and I was scared that he might hurt me. I saw him drop and instead of stopping, I shot him again. I was focused on him. He was my target. . . . Then I walked out. I was scared. Someone took the gun and told me to get out. . . ."

In response to the psychologist's query about the underlying causes of the shooting, petitioner said, "I tried to impress people. I wanted to become somebody. I

was scared to be left behind . . . .” When asked about the victims, Ngo and Lam, petitioner responded: “I didn’t know her. It took me a long time to understand I’m the reason for her funeral. I knew it was my fault but I told the Board it was an accident. I wanted to shoot the guy. Now I realize I’m the reason for the pain of her family . . . . As for Mr. Lam, I wish I could tell him that I’m sorry. Twenty years ago, I had the hate. I should have walked away and listened to you . . . . It was your house. I wanted to hurt you for no reason but you had the right to tell me no.” Petitioner also told the psychologist “I thought I’m not a gang member. But, I got introduced to a booklet . . . and I realized I was a gang member because I hung around gang members.”

At his 2009 hearing, petitioner admitted that over the years, he had “told the story a little different[ly],” and gave the following explanation of the shooting: “I’m not sure that . . . Lam was . . . a gang member . . . but I came to the party and during the break . . . I went outside and when I came back . . . Lam stopped me and we had the little argument. I went back outside and talked to my friends, and I came back [to the party] with a gun . . . . I saw . . . Lam dancing on the floor, and I fired the first round [at] him. He turned around, looked at me, and walked towards me, and . . . at that time I believe I’m kind of getting scared and kind of angry at him and I fired [another] round [at] him, . . . and then I saw him turn around and run . . . to the back door . . . and I fired three more rounds [in] his direction. . . .”

The Board questioned petitioner about the “discrepancies” in his explanation of the commitment offense. He said the differences resulted because “at that time my English not really that good” and when he “got a little better with the English . . . I just realized that the story is changing little by little . . . .”

Petitioner said he did not know Ngo and that it took him over 10 years “to understand I was the reason for her funeral. . . .” “[W]hen I first started my time, I underst[oo]d that what I did was wrong, but I didn’t really get that . . . idea until I came to the different self-help group[s] and shared the story with . . . fellow inmates[.] . . . I

did . . . some thinking and . . . I understand today . . . the magnitude and the seriousness

of my crime, . . . not just hurting Mr. Lam, but I took the life of one of the innocent bystanders.”

Later, when asked about his participation in Alcoholics Anonymous, petitioner reported he had prepared a list of everyone he had harmed. Asked by a Board member if his name was “on that list,” petitioner responded: “Yes and no. I understand that. I feel . . . I was a victim of the . . . society that people who I hang around with . . . were using me, and I, at that time, I just wanted to believe them and how that led me to today . . . .”

While in prison, petitioner obtained his General Equivalency Diploma (GED), plus certifications in mill and cabinetry and electronic typing. He worked as a clerk in various parts of the prison system, and as a literacy tutor, routinely receiving praise and high performance ratings from correctional officers. Since 1992, petitioner has regularly attended Alcoholics Anonymous and Narcotics Anonymous groups as permitted by the institutions where he has been housed. Other self-help programs petitioner attended include Project Pride Relationship Therapy, Alternative to Violence, Beyond Anger, and Creative Options. Petitioner’s prison discipline record consists of four California Department of Corrections (CDC) 115 serious misconduct notices, received between 1991 and 1994, and five CDC 128A notices for minor misconduct, the last received in 1995.

The Board received support letters from petitioner’s relatives concerning his parole plans. His godparents stated he could live with them upon release. A cousin who is a supervisor for a restaurant equipment supply business stated he would hire petitioner as a shipping clerk. The Board also received a letter of support from petitioner’s uncle. Because of the possibility he might be deported to Vietnam upon his release from prison, petitioner submitted letters from his mother in which she offered to provide him with a place to live and work if he returned to that country.

At the completion of the hearing the Board found petitioner suitable for parole. It acknowledged the existence of several factors tending to show parole unsuitability. These included “the severe nature and gravity of [the] commitment offense,” describing the shooting as “reckless, extraordinarily dangerous and absolutely unnecessary” with “absolutely no regard for human life.” The Board cited petitioner’s probationary status at the time of the commitment offense and his misconduct during both his pretrial detention in the Orange County Jail and on eight occasions after he entered state prison. In addition, it noted petitioner’s “past inconsistencies about the [commitment offense].” The Board also noted a 1992 incident contained in his confidential file concerning his involvement in an assault with “gang implications.”

Nonetheless the Board concluded other factors “show[ed petitioner] no longer pose[d] a risk of danger to society . . . .” First, it found petitioner had “genuine remorse for” killing Ngo and “shooting Mr. Lam as well.” As for his past inconsistencies about the commitment offense, the Board cited petitioner’s “language barrier that has lessened with time” and his admission during the hearing that it took him between 10 and 15 years of incarceration to fully accept responsibility for his actions. The Board also noted petitioner’s receipt of numerous commendations from prison officials, his “institutional programming,” which included obtaining a diploma, vocational training, plus lack of any discipline violations since early 1995, and participation in Alcoholics Anonymous, Narcotics Anonymous, anger management and violence workshops.

Finally, the Board acknowledged petitioner’s recent positive mental health evaluations and his specific plans for where he would live and work if paroled. The evaluation placed petitioner in the very low range for future violence and a low risk for recidivism. The psychologist who conducted the evaluation and prepared the report stated petitioner “has answered the question of why he did what he did to a great degree.”

The Governor reversed the Board's decision. Initially, he acknowledged "various positive factors" suggested petitioner was "suitable for parole . . . ." However, the Governor concluded four factors rendered petitioner unsuitable for parole.

First, he cited the "especially atrocious" commitment offense. Second, noting the discrepancies in petitioner's prior explanations of the commitment offense and the fact his "versions of the . . . offense are wholly inconsistent with the facts contained in the record," the Governor expressed "concern[]" that, although [petitioner] says he accepts responsibility and despite his participation in self-help therapy and other programs in prison, he has still failed to obtain insight into his violent behavior, which resulted in Ngo's death." "The fact that [petitioner] still attempts to minimize his action in the [commitment] offense and that he recently identified himself as a 'victim' indicates that he has still . . . not gained sufficient insight into or accepted full responsibility for the . . . offense," and this "lack of insight renders the [commitment] offense still relevant to my determination that [petitioner] continues to pose a current, unreasonable risk to public safety . . . ."

Third, the Governor "question[ed] the genuineness of [petitioner's] expressions of remorse because he has consistently qualified his remorse." Citing petitioner's statement that it took him a "'long time'" to accept responsibility for Ngo's death, plus his admission he "'wanted to shoot [Lam]," the Governor concluded "[t]hese explanations indicate that, had Lam been killed, the murder would have somehow been justified," and thus petitioner still "fails to acknowledge that his actions would not have been justified under any circumstances – even if he had killed his intended target."

Finally, the Governor concluded petitioner "has not gained sufficient insight into his gang involvement because he continuously minimizes his gang activity." He cited statements from the probation officer's report "describing [petitioner] as a gang member" and the fact "witnesses to the shooting" expressed fear about testifying against petitioner "'because of fear of gang retaliation . . . ." The Governor also noted that,

“[u]ntil recently [petitioner] had long maintained that he was not a member of a gang, despite abundant evidence to the contrary.”

The Governor thus concluded the “gravity of the crime,” plus his “concern[] . . . [petitioner] still minimizes his prior criminal conduct, . . . has not accepted full responsibility for the [commitment] offense, . . . his expressions of remorse do not appear genuine and . . . he has consistently minimized his gang involvement,” the “evidence indicates . . . [petitioner] still poses a risk of recidivism and violence and that his release from prison at this time would pose an unreasonable risk to public safety.”

## DISCUSSION

### *1. Introduction*

Penal Code section 3041, subdivision (b) declares the parole board “shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed . . . .”

The governing regulations specify the factors indicating both an inmate’s suitability and his or her unsuitability for parole. (Cal.Code Regs., tit. 15, § 2402, subds. (c) & (d).) The applicable regulations also provide, “a life prisoner shall be found unsuitable for and denied parole if in the judgment of the [Board] the prisoner will pose an unreasonable risk of danger to society if released from prison.” (Cal. Code Regs., tit. 15, § 2402, subd. (a).) In making this determination, the Board shall consider “[a]ll relevant, reliable information available . . . .” (Cal. Code Regs., tit. 15, § 2402, subd. (b).)

The Governor has authority to conduct a de novo review of the Board’s decision and to modify or reverse it based on materials provided by the Board. (Cal.

Const., art. V, § 8, subd. (b); Pen. Code, § 3041.2, subd. (b).) And in reviewing a board's parole suitability decision "the Governor . . . sits as the trier of fact and may draw reasonable inferences from the evidence. [Citation.]" (*In re Smith* (2009) 171 Cal.App.4th 1631, 1639.)

"Although 'the Governor's decision must be based upon the same factors that restrict the Board in rendering its parole decision' [citation], [since] the Governor undertakes an independent, de novo review of the inmate's suitability for parole," he or she "has discretion to be 'more stringent or cautious' in determining whether a defendant poses an unreasonable risk to public safety. [Citation.] '[T]he precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the Governor . . .'" (*In re Lawrence* (2008) 44 Cal.4th 1181, 1204.)

## 2. *Judicial Review of a Parole Suitability Decision*

As indicated, "the statutes and governing regulations establish that the decision to grant or deny parole is committed entirely to the judgment and discretion of the Board, with a constitutionally based veto power over the Board's decision vested in the Governor." (*In re Prather* (2010) 50 Cal.4th 238, 251.) But to "ensure compliance" with due process of law, courts are "[n]evertheless . . . authorized to review the merits of the Board's or the Governor's decision to grant or deny parole." The standard of judicial review of the Board's or Governor's decision is "whether 'some evidence' supports the conclusion that the inmate is unsuitable for parole because he or she currently is dangerous." (*In re Lawrence, supra*, 44 Cal.4th at p. 1191.)

The some evidence standard is a deferential one. "Only a modicum of evidence is required. Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of the Governor." (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 677.) Thus, even though "the Governor simply review[s] the documents before the Board, he [is] free to make his own credibility determinations," and

if the Governor chooses “to disbelieve petitioner, we [are] bound by that determination. [Citation.]” (*In re Tripp* (2007) 150 Cal.App.4th 306, 318.)

“As with the discretion exercised by the Board in making its decision, the precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the Governor, but the decision must reflect an individualized consideration of the specified criteria and cannot be arbitrary or capricious.” (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 677.) “[D]ue consideration’ of the specified factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness.” (*In re Lawrence, supra*, 44 Cal.4th at p. 1210.) “Accordingly, . . . to give meaning to the statute’s directive that the Board *shall normally* set a parole release date [citation], . . . the circumstances of the commitment offense (or any of the other factors related to unsuitability) establish unsuitability if, and only if, those circumstances are probative to the determination that a prisoner remains a danger to the public.” (*Id.* at p. 1212.) Thus, since “[i]t is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision,” but rather “how those factors interrelate to support a conclusion of current dangerousness to the public,” “the relevant inquiry [for a court reviewing a parole decision by the Board or Governor] is whether some evidence supports the *decision* . . . that the inmate constitutes a current threat to public safety, and not merely whether some evidence confirms the existence of certain factual findings. [Citations.]” (*Ibid.*)

### 3. Analysis

Petitioner claims the Governor’s reversal of the Board’s parole suitability finding was an abuse of discretion. He relies on the factors favoring parole and argues “the nature of the commitment offense” is insufficient to establish some evidence of

current dangerousness. He also attacks the evidentiary insufficiency for the Governor's other unsuitability findings. In response, the Governor notes the deferential standard of judicial review of parole rulings and relies on the "combination of [other] factors" cited to conclude "petitioner [presents] an unreasonable risk of danger to the public and thus [is] unsuitable for parole at this time."

As for the nature of his commitment offense, both Penal Code section 3041 and the governing regulations state "the gravity of the current convicted offense" is a relevant factor to consider in determining whether an inmate is suitable for parole. (Pen. Code, § 3041, subd. (b); Cal.Code Regs., tit. 15, § 2402, subd. (c).) The California Supreme Court has also recognized "the Board and the Governor may rely upon the aggravated circumstances of the commitment offense as a basis for a decision denying parole" in some circumstances. (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1214.)

Here, the Board agreed the commitment offense was a factor suggesting petitioner was not suitable for parole. But it discounted the gravity of petitioner's offense noting it occurred "26 years ago" when he was "18 years old." "[T]he aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1214.)

Petitioner also had a record of prior criminal activity before he was charged with and pleaded guilty to the shooting of Ngo and Lam. But the Governor did not rely on this pre-incarceration history to support his decision. (*In re Vasquez* (2009) 170 Cal.App.4th 370, 385 [courts confine review to only the factors cited by the Board or Governor for granting or denying parole ruling]; *In re Roderick* (2007) 154

Cal.App.4th 242, 265 [same].) Thus, the focus in this case is on petitioner post-incarceration record.

Unlike *Lawrence*, the Governor cited evidence of three other factors to support his reversal of the Board's parole suitability ruling. Two of them concerned petitioner's purported lack of "insight into his violent behavior" and "his gang involvement." Although parole cannot be conditioned on an inmate's admission of guilt (Pen. Code, § 5011, subd. (b); Cal. Code Regs., tit. 15, § 2236), "[a]n inmate's lack of insight into, or minimizing of responsibility for, previous criminality, despite professing some responsibility, is a relevant consideration. [Citation.]" (*In re Lazor* (2009) 172 Cal.App.4th 1185, 1202, fn. omitted; see also *In re Shaputis* (2008) 44 Cal.4th 1241, 1260-1261.)

The Governor cited petitioner's contradictory versions of the shooting over the years. A consideration of the statements cited to support this assertion, in the context of the entire record, reflects the Governor's reliance on inconsistency is unfounded. First, the Governor referred to statements petitioner made to the probation department just after his arrest and in both 1988 and 1992. These comments occurred during the first decade of petitioner's incarceration. At the 2009 hearing, petitioner acknowledged it took him over 10 years to realize his responsibility for Ngo's death and Lam's injury. The other statements cited, made in 1998, 2005, and 2008, are in many respects similar to what he said during the 2009 parole consideration hearing. The "inconsistencies" involve either petitioner's limited English language skills, a difference in the level of detail of the various statements, or irrelevant details concerning the timing of the events that lead to the shooting. In addition, the prior statements focused primarily on what happened during the shooting while the focus of the latter statements was on why the shooting occurred. "[E]xpressions of insight and remorse will vary from prisoner to prisoner and . . . there is no special formula for a prisoner to articulate in order to communicate that he or she has gained insight into, and formed a commitment to ending,

a previous pattern of violent behavior.” (*In re Shaputis*, *supra*, 44 Cal.4th at p. 1260, fn. 18; see also *In re Twinn* (2010) 190 Cal.App.4th 447, 465.) In his 2008 psychological evaluation and at the 2009 hearing, petitioner took full responsibility for killing Ngo and injuring Lam.

The same is true for petitioner’s purported lack of insight into his gang involvement. The Governor focused on petitioner’s actions nearly 20 years ago. After referring to a 1992 gang-related prison assault in which petitioner had participated, the Board declared “there is no other documentation in your confidential file or anywhere else in your file that really substantiates any specific [gang] involvement . . . . [T]here’s nothing – there’s no [CDC] 115 to back up the document [and] . . . you were not retained in ad[ministrative] seg[regation] for a long time over that . . . .” In addition, during the 2008 psychological evaluation, petitioner acknowledged, after reading a booklet, he realized “[t]he Board was right” about his gang involvement because, in his effort to “fit in,” he “hung around [with] gang members,” saw them frequently, “talked like them and acted like them.” “There is no minimum time requirement. Rather, acceptance of responsibility works in favor of release ‘[no] matter how longstanding or recent it is,’ so long as the inmate ‘genuinely accepts responsibility . . . .’ [Citation.]” (*In re Elkins* (2006) 144 Cal.App.4th 475, 495.) Thus, the record reflects petitioner has belatedly, but fully, acknowledged his gang involvement.

In his ruling, the Governor referred to other purportedly gang-related incidents involving petitioner. Petitioner contends the Governor’s reliance on this material violates his right to due process because the information was “not considered by the Board.” We agree.

Under California Constitution, article V, section 8, subdivision (b), “The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. . . .” Because of this limitation on the Governor’s power to parole suitability rulings, “the Governor’s

constitutional authority is limited to a review of the materials provided by the Board. [Citations.]” (*In re Smith* (2003) 109 Cal.App.4th 489, 507, italics omitted; see also *In re Gray* (2007) 151 Cal.App.4th 379, 402 [“The proceedings before the 2006 Board were not part of the 2005 Board proceedings or the record presented to the Governor for review,” and “the Governor erred by considering evidence presented to the 2006 Board, as well as the findings of the 2006 Board”].) As noted, in reaching its decision, the Board found the information summarizing the aforementioned 1992 incident constituted the only “document” in petitioner’s confidential file concerning his participation in gang-related activity, and “no other documentation in your confidential file or anywhere else in your file . . . substantiates any specific involvement” in gangs. Since the additional information cited by the Governor was not before the Board, he exceeded his constitutional authority in relying on it. For this reason, we also decline the Attorney General’s request to review, in camera, the confidential material filed with this court.

The Governor also disagreed with the Board’s finding petitioner had expressed genuine remorse for his actions. Remorse is a factor relevant to an inmate’s parole suitability. (Cal. Code Regs., tit 15, § 2402, subd. (d)(3); *In re Lawrence, supra*, 44 Cal.4th at p. 1228 [“In some cases, such as those in which the inmate . . . has shown a lack of . . . remorse, the aggravated circumstances of the commitment offense may well continue to provide ‘some evidence’ of current dangerousness even decades after commission of the offense”].) The Governor concluded petitioner’s comment to the psychologist during the 2008 psychological evaluation that he “wanted to shoot” Lam, “indicate[d] that, had Lam been killed, the murder would have somehow been justified . . . .”

Again, a review of petitioner’s complete statement reflects the Governor’s finding is not supported by the record. According to the psychologist’s report, “[w]hen asked about the victim” petitioner answered as follows: “I didn’t know [Ngo]. It took me a long time to understand I’m the reason for her funeral. I knew it was my fault but I

told the Board it was an accident. I wanted to shoot the guy. Now I realize I'm the reason for the pain of her family. She was too young. No parent wants to bury their kid. When I lost my brother, I saw I'm the reason for their pain every single day. They think about her and who caused this pain. I don't get mad that the family opposed my parole. . . . I learned what's wrong and what's right. . . . As for Mr. Lam, I wish I could tell him that I'm sorry. Twenty years ago, I had the hate. I should have walked away and listened to you to give you that respect. It was your house. I wanted to hurt you for no reason but you had the right to tell me no." It is clear from petitioner's response he was not suggesting the shooting would have been justified if Lam had been killed.

While the "deferential standard of review requires us to credit the Governor's findings if they are supported by a modicum of evidence, . . . [that] does not mean . . . evidence suggesting a commitment offense was 'especially heinous' or 'particularly egregious' will eternally provide adequate support for a decision that an inmate is unsuitable for parole." (*In re Lawrence, supra*, 44 Cal.4th at p. 1226.) Thus, "[w]hen . . . all of the information in a postconviction record supports the determination that the inmate is rehabilitated and no longer poses a danger to public safety, and the Governor has neither disputed the petitioner's rehabilitative gains nor, importantly, related the commitment offense to current circumstances or suggested that any further rehabilitation might change the ultimate decision that petitioner remains a danger, . . . the commitment offense, absent articulation of a rational nexus between those facts and current dangerousness, fails to provide the required 'modicum of evidence' of unsuitability." (*Id.* at p. 1227.)

The remaining question concerns the appropriate remedy in this circumstance. "Because we have reviewed the materials that were before the Board and found no evidence to support a decision other than the one reached by the Board, a remand to the Governor would amount to an idle act. [Citation.]" (*In re Aguilar* (2008) 168 Cal.App.4th 1479, 1491.) In *In re Gomez* (2010) 190 Cal.App.4th 1291, we

expressed our agreement with this rationale and declared that where the Governor’s reversal of a parole board suitability finding is judicially determined not to be supported by some evidence in the record, “[t]he proper remedy is to vacate the Governor’s decision and to reinstate that of the Board. [Citation.]’ [Citations.]” (*Id.* at p. 1309.) We conclude that is the appropriate result in this case.

#### DISPOSITION

The petition for a writ of habeas corpus is granted. The Board of Parole Hearing’s grant of parole is reinstated. The Attorney General’s request that we review in camera confidential documents submitted under seal is denied.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.